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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,781	09/27/2000	Paul C. Daly	4538US	6751
7590 03/13/2006			EXAMINER	
MICHAEL W. HAAS, ESQ. Respironics, Inc 1010 Murry Ridge Lane Murrysville, PA 15668			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/670,781

Applicant(s)

DALY, PAUL C.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6,7,10,12,13,15-17 and 19-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,10,12,13,15-17 and 19-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-4, 6, 7, 10, 21 and 23-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazure ('207) in view of applicant's admission of the prior art as evidenced by Blass et al (2/91), Stevens et al (January/February. 1999), Stevens et al (1997) and Frank (2000), further in view of Beckers ('746), Hendricks et al ('242), Bublitz (4,211,338), further in view of Seattle Post-Intelligencer (11/14/90) and Wisconsin State J. (2/6/91, p. 4A), further in view of San Francisco Examiner (11/1/92), New Food Products in Japan (10/91) and Food Engineering (51, 8, 43-4, 1979), further in view of Koch et al ('241), Corbic ('594), Lane ('620), Sharkey ('262), Stockdale ('766), Meisner ('489) and Christine et al ('414), ~~essentially~~ for the reasons of record set forth in the Office actions mailed 3/13/02, 7/11/03, 3/31/04, 1/5/05 and 7/13/05.

Claims 12, 13, 15, 16, 22, 17, 19, 20 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of the prior art as evidenced by Blass et al (2/91), Stevens et al (January/February 1999), Stevens et al (1997), Frank (2000), Seattle Post –Intelligencer (11/4/90) and Wisconsin State J (2/6/91 p. 4A), in view of Lazure et al, Beckers, Hendriks et al and Bublitz, further in view of Koch et al, Corbic, Lane, Sharkey, Stockdale, Meisner, Christine et al, further in view of San Francisco Examiner, New Food Products in Japan, and Food Engineering for the reasons given in the Office actions mailed 3/13/02, 7/11/03, 3/31/04 and 1/5/05 and 7/13/05.

All of applicant's remarks have been fully and carefully considered but have been found to be essentially restatements of previous urgings that have been fully responded to in the record. It is urged that the rejection fails to present any prior art reference,

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which suggests combining or modifying the references as proposed in the rejection.

This urging is totally unconvincing. The combination of references presents a strong prima facie case of obviousness. With the art teaching it was notoriously conventional to provide sucrose solutions useful as an analgesic for newborns, and the art also teaching it was notoriously conventional to provide single-use/single-serve containers for all types of products including unit doses of medicines, the art taken as a whole screams out to be combined. If what applicant is urging is that a single reference does not teach providing the sucrose solution in a single-serve/dose container, then this is correct. However, the rejection would have been under 35 USC 102, anticipation, and no other reference would have been required. The rejection, however, is under 35 USC 103, obviousness, not 35 USC 102, anticipation. The amendment, therefore, basically urges there is no anticipation, but the law requires the invention to also be unobvious. It is urged that the art taken as a whole does not recognize "the problem". If "the problem" is inconvenience, and the potential for waste and contamination, these issues are those that are universally recognized as being addressed by single-use/serve containers. That is, whether the products are foods such as mustard and ketchup or medicines, (or even inedibles), the use of single use/serve containers provide greater convenience, less waste and less chance of contamination, than larger, bulk type containers. It is urged that the Office actions have "summarily" dismissed the secondary considerations. This, of course, is not the case. The secondary considerations were carefully considered but were not found to present any unexpected evidence, but instead presented evidence that would have been expected for one of ordinary skill in the art.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steve Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
3/9/06